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A BILL FOR AN ACT

RELATING TO THE EMPLOYMENT SECURITY LAW.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 383-66, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§383-66 Contribution rates, how determined. (a)** The
4 department, for the nine-month period April 1, 1941, to December
5 31, 1941, and for each calendar year thereafter, except as
6 otherwise provided in this part, shall classify employers in
7 accordance with their actual experience in the payment of
8 contributions and with respect to benefits charged against their
9 accounts with a view to fixing the contribution rates to reflect
10 this experience. The department shall determine the
11 contribution rate of each employer in accordance with the
12 following requirements:

- 13 (1) The standard rate of contributions payable by each
14 employer for any calendar year through 1984 shall be
15 three per cent. For the calendar year 1985 and
16 thereafter the standard rate of contributions payable
17 by each employer shall be five and four-tenths per
18 cent.

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1 (2) No employer's rate for the calendar year 1942 and for
2 any calendar year thereafter shall be other than the
3 maximum rate unless and until the employer's account
4 has been chargeable with benefits throughout the
5 thirty-six consecutive calendar month period ending on
6 December 31 of the preceding calendar year, except
7 that, for the calendar year 1956 and for each calendar
8 year thereafter, an employer who has not been subject
9 to the law for a sufficient period to meet this
10 requirement may qualify for a rate other than the
11 maximum rate if the employer's account has been
12 chargeable throughout a lesser period but in no event
13 less than the twelve consecutive calendar month period
14 ending on December 31 of the preceding calendar year.
15 For the calendar years 1985 through 1991, the
16 contribution rate for a new or newly covered employer
17 shall be the sum of the employer's basic contribution
18 rate of three and six-tenths per cent and the fund
19 solvency contribution rate determined for that year
20 pursuant to section 383-68(a), until the employer's
21 account has been chargeable with benefits throughout
22 the twelve consecutive calendar month period ending on
23 December 31 of the preceding calendar year; except
24 that no employer's contribution rate shall be greater

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1 than five and four-tenths per cent and no employer
2 with a negative reserve ratio shall have a
3 contribution rate less than the employer's basic
4 contribution rate. For calendar years 1992 and
5 thereafter, the contribution rate for a new or newly
6 covered employer shall be the contribution rate
7 assigned to any employer with .0000 reserve ratio,
8 until the employer's account has been chargeable with
9 benefits throughout the twelve consecutive calendar
10 month period ending on December 31 of the preceding
11 calendar year.

12 (3) Any amount credited to this State under section 903 of
13 the Social Security Act, as amended, which has been
14 appropriated for expenses of administration, whether
15 or not withdrawn from the trust fund, shall be
16 excluded from the fund for the purposes of this
17 paragraph. Any advance that may be made to this State
18 under section 1201 of the Social Security Act, whether
19 or not withdrawn from this trust fund, shall be
20 excluded from the fund for the purposes of this
21 paragraph. No employer's rate shall be reduced in any
22 amount which is not allowable as an additional credit,
23 against the tax levied by the federal Unemployment Tax
24 Act pursuant to section 3302(b) of the federal

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1 Internal Revenue Code or pursuant to any other federal
2 statute, successor to section 3302(b), which provides
3 for the additional credit now provided for in section
4 3302(b).

- 5 (4) If, when any classification of employers is to be made
6 (which may be after the commencement of the period for
7 which the classification is to be made), the
8 department finds that any employer has failed to file
9 any report required in connection therewith or has
10 filed a report that the department finds incorrect or
11 insufficient, the department shall notify the employer
12 thereof by mail addressed to the employer's last known
13 address. Unless the employer files the report or a
14 corrected or sufficient report, as the case may be,
15 within fifteen days after the mailing of the notice,
16 the maximum rate of contributions shall be payable by
17 the employer for the period for which the contribution
18 rate is to be fixed. Effective January 1, 1987, the
19 director, for excusable failure, may redetermine the
20 assignment of the maximum contribution rate in
21 accordance with this section, provided the employer
22 files all reports as required by the department and
23 submits a written request for redetermination before

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1 December 31 of the year for which the contribution
2 rate is to be fixed.

3 (5) For the purpose of sections 383-63 to 383-69, if after
4 December 31, 1939, any employing unit in any manner
5 succeeds to or acquires the organization, trade, or
6 business, or substantially all the assets thereof
7 (whether or not the successor or acquiring unit was an
8 "employing unit", as that term is defined in section
9 383-1 prior to the acquisition), or after December 31,
10 1988 and prior to December 31, 1992, acquires a
11 clearly identifiable and segregable portion of the
12 organization, trade, or business of another which at
13 the time of the acquisition was an employer subject to
14 this chapter, and the successor continues or resumes
15 the organization, trade, or business and continues to
16 employ all or nearly all of the predecessor's
17 employees, or the successor continues or resumes the
18 clearly identifiable and segregable portion of the
19 organization, trade, or business and continues to
20 employ all or nearly all of the employees of the
21 clearly identifiable and segregable portion, an
22 application may be made for transfer of the
23 predecessor's experience record. If the predecessor
24 employer has submitted all information and reports

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1 required by the department including amended quarterly
2 wage reports identifying the employees transferred or
3 retained and executed and filed with the department
4 before December 31 of the calendar year following the
5 calendar year in which the acquisition occurred on a
6 form approved by the department a waiver relinquishing
7 the rights to all or the clearly identifiable and
8 segregable portion of the predecessor's prior
9 experience record with respect to its separate
10 account, actual contribution payment, and benefit
11 chargeability experience, annual payrolls and other
12 data for the purpose of obtaining a reduced rate, and
13 requesting the department to permit the experience
14 record to inure to the benefit of the successor
15 employing unit upon request of the successor employing
16 unit, the experience record for rate computation
17 purposes of the predecessor shall thereupon be deemed
18 the experience record of the successor and the
19 experience record shall be transferred by the
20 department to the successor employing unit and shall
21 become the separate account of the employing unit as
22 of the date of the acquisition. Benefits chargeable
23 to the predecessor employer or successor employer in
24 case of an acquisition of a clearly identifiable and

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1 segregable portion of the organization, trade, or
2 business, after the date of acquisition on account of
3 employment prior to the date of the acquisition shall
4 be charged to the separate account of the successor
5 employing unit. In case of an acquisition of a
6 clearly identifiable and segregable portion of the
7 organization, trade, or business, the experience
8 record that inures to the benefit of the successor
9 employer shall be determined as follows:

10 (A) Wages, as used in section 383-61, attributable to
11 the clearly identifiable and segregable portion
12 shall be for the period beginning with the most
13 recent three consecutive calendar years
14 immediately preceding the determination of rates
15 under ~~[section]~~ sections 383-63 to 383-69 and
16 through the date of acquisition; and

17 (B) Reserve balance attributable to the clearly
18 identifiable and segregable portion shall be the
19 amount determined by dividing the wages, as used
20 in section 383-61, of the clearly identifiable
21 and segregable portion in the three calendar
22 years (or that lesser period as the clearly
23 identifiable and segregable portion may have been
24 in operation) immediately preceding the

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1 computation date of the rating period prior to
2 which the acquisition occurred by the total
3 taxable payrolls of the predecessor for the
4 three-year period (or that lesser period as the
5 clearly identifiable and segregable portion may
6 have been in operation) and multiplying the
7 quotient by the reserve balance of the
8 predecessor employer calculated as of the
9 acquisition date.

10 Provided the waiver or waivers required herein are
11 filed with the department within sixty days after the
12 date of acquisition, the successor employing unit,
13 unless already an employer subject to this chapter,
14 shall be subject from the date of acquisition to the
15 rate of contribution of the predecessor or of two or
16 more predecessors if they have the same contribution
17 rate. If there are two or more predecessors having
18 different contribution rates, the successor shall be
19 subject to the rate prescribed for new or newly
20 covered employers under paragraph (2) until the next
21 determination of rates under sections 383-63 to 383-
22 69, at which time the experience records of the
23 predecessors and successor shall be combined and shall
24 be deemed to be the experience record of a single

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1 employing unit and the successor's rate shall
2 thereupon be determined upon the basis of the combined
3 experience. If the successor at the time of the
4 transfer is an employer subject to this chapter, the
5 rate of contribution to which the successor is then
6 subject shall remain the same until the next
7 determination of rates under sections 383-63 to 383-
8 69, at which time the experience records of the
9 predecessor and successor shall be combined and shall
10 be deemed to be the experience record of a single
11 employing unit and the successor's rate shall
12 thereupon be determined upon the basis of the combined
13 experience. For the purpose of determination of rates
14 under sections 383-63 to 383-69 of all successor
15 employing units, waivers as required herein, if not
16 previously filed as hereinabove provided, shall be
17 filed with the department not later than March 1 of
18 the year for which the rate is determined; provided
19 that no waiver shall be accepted by the department for
20 filing unless the employing unit executing the waiver
21 has filed all reports and paid all contributions
22 required by this chapter.

- 23 (6) The department may prescribe rules for the
24 establishment, maintenance, and dissolution of joint

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1 accounts by two or more employers, and, in accordance
2 with the rules and upon application by two or more
3 employers to establish such an account, or to merge
4 their several individual accounts in a joint account,
5 shall maintain the joint account as if it constituted
6 a single employer's account. The rules shall be
7 consistent with the federal requirements for
8 additional credit allowance in section 3303 of the
9 federal Internal Revenue Code and consistent with this
10 chapter.

11 (7) Whenever there is an amendment to this chapter which,
12 if immediately effective, would change an employer's
13 rate of contributions, the rate of the employer shall
14 be changed in accordance with the amendment and the
15 new rate shall apply for the remainder of the calendar
16 year beginning with the calendar quarter immediately
17 following the effective date of the amendment
18 providing for the change, unless otherwise provided by
19 the amendment.

20 (8) For the purposes of this section "contribution rate"
21 shall mean the basic contribution rate as defined in
22 section 383-68 when applied to calendar year 1978 or
23 any calendar year thereafter.

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1 (9) For the purposes of this section, the terms "employing
2 unit," "employer," "predecessor," and "successor"
3 shall include both the singular and the plural of each
4 term. Nothing in this section shall prevent two or
5 more successor employing units, which each succeed to
6 or acquire a clearly identifiable and segregable
7 portion of a predecessor employing unit, from gaining
8 the benefit of the clearly identifiable and segregable
9 portion of the predecessor's experience record.

10 Provided that the terms of this section are complied with,
11 nothing herein shall bar a predecessor employer from waiving the
12 rights to all or the clearly identifiable and segregable portion
13 of the predecessor's prior experience record in favor of a
14 successor employer where the successor acquired a clearly
15 identifiable and segregable portion of the predecessor's
16 organization, trade, or business after December 31, 1988 and
17 prior to December 31, 1992.

18 (b) Notwithstanding any other provisions of this chapter,
19 the following shall apply regarding assignment of rates and
20 transfers of experience:

21 (1) If an employing unit transfers its organization,
22 trade, or business, or a portion thereof, to another
23 employing unit and, at the time of the transfer, there
24 is substantially common ownership, management, or

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1 control of the two employing units, both employing
2 units shall file a notification of the transfer with
3 the department on a form approved by the department
4 within thirty days after the date of the transfer.
5 The department shall transfer the experience records
6 attributable to the transferred organization, trade,
7 or business to the employing unit to whom the
8 organization, trade, or business is transferred. The
9 rates of both employing units shall be recalculated
10 and made effective beginning with the calendar quarter
11 immediately following the date of the transfer of the
12 organization, trade, or business.

13 (2) If a person is not an employing unit as defined in
14 section 383-1 at the time it acquires the
15 organization, trade, or business of another employing
16 unit, both the person and the employing unit shall
17 file a notification of the acquisition with the
18 department on a form approved by the department within
19 thirty days after the date of the acquisition. If the
20 department determines at the time of the acquisition
21 or thereafter, based on objective factors which may
22 include the cost of acquiring the organization, trade,
23 or business; whether the person continued the activity
24 of the acquired organization, trade, or business; how

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1 long the organization, trade, or business was
2 continued; or whether a substantial number of new
3 employees were hired for performance of duties
4 unrelated to the organization, trade, or business
5 activity conducted prior to the acquisition; that the
6 acquisition was solely or primarily for the purpose of
7 obtaining a lower rate of contribution, the person
8 shall not be assigned the lower rate and shall be
9 assigned the contribution rate for a new or newly
10 covered employer pursuant to subsection (a) (2)
11 instead.

12 (3) An employing unit or person who is not an employing
13 unit shall be subject to penalties under paragraph (4)
14 or (5) if the employing unit or person who is not an
15 employing unit:

16 (A) Knowingly violates or attempts to violate the
17 provisions in subsection (b) or any other
18 provisions of this chapter related to determining
19 the assignment of a contribution rate; or

20 (B) Makes any false statement or representation or
21 fails to disclose a material fact to the
22 department in connection with the transfer or
23 acquisition of an organization, trade, or
24 business; or

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1 (C) Knowingly advises another employing unit or
2 person in a way that results in a violation or
3 attempted violation of subsection (b).

4 (4) If the person is an employing unit:

5 (A) The employing unit shall be subject to the
6 highest rate assignable under this chapter for
7 the calendar year during which the violation or
8 attempted violation occurred and for the
9 consecutive three calendar years immediately
10 following; or

11 (B) If the employing unit is already at the highest
12 rate or if the amount of increase in the
13 employing unit's rate would be less than two
14 percent for the calendar year during which the
15 violation or attempted violation occurred, a
16 penalty equal to contributions of two per cent of
17 taxable wages shall be imposed for the calendar
18 year during which the violation or attempted
19 violation occurred and the consecutive three
20 calendar years immediately following. Any
21 penalty amount collected in excess of the maximum
22 contributions payable at the highest rate shall
23 be deposited in the special unemployment

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1 insurance administration fund in accordance with
2 section 383-127.

3 (5) If the person is not an employing unit, the person
4 shall be subject to a maximum penalty of \$5,000. The
5 penalty shall be deposited in the special unemployment
6 insurance administration fund in accordance with
7 section 383-127.

8 (6) For purposes of this subsection, the following
9 definitions shall apply:

10 (A) "Knowingly" means having actual knowledge of or
11 acting with deliberate ignorance or reckless
12 disregard for the requirements or prohibition
13 involved;

14 (B) "Violates or attempts to violate" includes, but
15 is not limited to, intent to evade,
16 misrepresentation or wilful nondisclosure;

17 (C) "Person" has the meaning given such term by
18 section 6601(a)(1) of the Internal Revenue Code
19 of 1986;

20 (D) "Organization, trade, or business" shall include
21 the employer's workforce.

22 (7) In addition to the civil penalty imposed by paragraph
23 (4) or (5), any violation of this section may be
24 prosecuted under sections 383-142 and 383-143. No

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1 existing civil or criminal remedy for any wrongful
2 action that is a violation of any statute or any rule
3 of the department or the ordinance of any county shall
4 be excluded or impaired by this section.

5 (8) The department shall establish procedures to identify
6 the transfer or acquisition of an employing unit for
7 purposes of this section.

8 (9) This section shall be interpreted and applied in a
9 manner to meet the minimum requirements contained in
10 any guidance or regulations issued by the United
11 States Department of Labor."

12 SECTION 2. Section 383-142, Hawaii Revised Statutes, is
13 amended to read as follows:

14 **"§383-142 Employing units.** Any employing unit or any
15 officer or agent of an employing unit or any other person who
16 makes a false statement or representation knowing it to be
17 false, or who knowingly fails to disclose a material fact, to
18 prevent or reduce the payment of benefits to any individual
19 entitled thereto, or to avoid becoming or remaining a subject
20 employer or to avoid or reduce any contribution or other payment
21 required from an employing unit under this chapter or under the
22 unemployment compensation law of any state or of the federal
23 government, or who wilfully fails or refuses to make any such
24 contributions or other payment or to furnish any reports

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1 required hereunder or to produce or permit the inspection or
2 copying of records as required hereunder, or who wilfully fails
3 to establish, maintain, or preserve records of all individuals
4 in his employ which show the total amount of wages paid for each
5 pay-period to each such individual while in his employ, or who
6 wilfully fails to establish, maintain, or preserve any other
7 record as required by this chapter or any rule or regulation
8 adopted hereunder, shall be [~~fined not less than \$20 nor more~~
9 ~~than \$200, or imprisoned not more than sixty days, or both;~~]
10 charged with a misdemeanor, but subject to a maximum fine of
11 \$10,000; and each such false statement or representation or
12 failure to disclose a material fact, or failure to establish,
13 maintain, or preserve records, and each day of such failure or
14 refusal shall constitute a separate offense."

15 SECTION 3. Section 383-143, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "**§383-143 General penalty.** Any person who wilfully
18 violates this chapter or any order, rule, or regulation
19 thereunder, the violation of which is made unlawful or the
20 observance of which is required under the terms of this chapter,
21 and for which a penalty is neither prescribed in this chapter
22 nor provided by any other applicable statute, shall be [~~fined~~
23 ~~not less than \$20 nor more than \$200, or imprisoned not more~~
24 ~~than sixty days, or both]~~ charged with a misdemeanor but subject

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1 to a maximum fine of \$10,000; and each day such violation
2 continues shall be deemed to be a separate offense."

3 SECTION 4. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 5. This Act shall take effect upon its approval.

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7 INTRODUCED BY: _____

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BY REQUEST

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